

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN J. VAN BUSKIRK, et al.,

Plaintiffs,

CONOCOPHILLIPS, INC. a foreign  
corporation, and INTALCO ALUMINUM  
CORPORATION, a foreign corporation,

Defendants.

No. C06-1220-JCC

**STIPULATION AND ORDER TO  
CONTINUE DISPOSITIVE MOTION  
DEADLINE**

**STIPULATION**

Plaintiffs John Van Buskirk, *et al.*, by and through their attorney of record, Richard M. Stephens of Groen Stephens & Klinge LLP, Defendant ConocoPhillips Company, by and through its attorneys of record, Grant S. Degginger and Michael A. Nesteroff of Lane Powell PC, and Defendant Intalco Aluminum Corporation, by and through its attorneys of record Bradley Fisher of Davis Wright Tremaine LLP and Belynda Reck of Hunton & Williams LLP, stipulate and agree as follows:

1. On September 23, 2008, this Court entered an Order setting, *inter alia*, trial and pretrial dates in this action as follows:

STIPULATION AND ORDER TO  
CONTINUE PRETRIAL DEADLINES

— 1

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1	Trial Date:	July 9, 2009
2	Dispositive Motions:	April 6, 2009
3	39.1 Mediation:	May 13, 2009
4	Motions in limine:	June 9, 2009
5	Pretrial Order:	July 2, 2009
6	Voir dire/jury instructions/trial brief	July 2, 2009

7 The remaining dates set by the Court in the September 23, 2008 Order have already passed.

8 2. On April 3, 2009, this Court entered an Order continuing trial and pretrial dates in  
9 this action as follows:

10	Trial Date:	January 11, 2010
11	Proposed voir dire/jury instructions/trial briefs:	January 7, 2010
12	Pretrial Order:	December 31, 2009

13 The Court's April 3, 2009 Order was silent as to the Dispositive Motions, 39.1 Mediation and  
14 Motions in Limine deadlines, which have not yet passed.

15 3. In light of the Court's April 3, 2009 Order, the parties agree that it would be  
16 appropriate to continue the remaining pretrial deadlines that have not yet passed as follows:

17	Dispositive Motions:	October 1, 2009
18	39.1 Mediation:	November 17, 2009
19	Motions in limine:	December 31, 2009

20 4. The parties agree that no extension of the pretrial deadlines that have already  
21 passed is necessary, except as the parties have already agreed. Specifically, Plaintiffs' counsel  
22 has represented that their expert, Jeffrey Layton, was unable to comply with the Court's schedule  
23 for rebuttal expert reports and deposition due to a medical condition. Accordingly, the parties  
24 have agreed to extend the expert discovery cut-off only with regard to the depositions and  
25 rebuttal reports of Mr. Layton and Defendants' experts Duncan Hay and Robert Wallace.  
26 Plaintiffs' counsel estimates that Mr. Layton's medical condition requires an extension until  
April 30, 2009 in order to prepare his rebuttal report and make himself available for deposition.

Further, Plaintiffs' survey expert, Rod Miller's medical status remains uncertain and Plaintiffs' counsel will keep the parties apprised of any change in his condition that may necessitate substitution of a new expert. Defendants do not at this time agree to the substitution of a new expert for Mr. Miller, and further note that any substitution ultimately allowed by the Court may not provide testimony beyond the scope of, or inconsistent with, the expert testimony and opinions previously provided by Mr. Miller. If such substitution expert is later allowed, Defendants are not foreclosed from a rebuttal expert on that issue, if needed. Plaintiffs also agree that Rowland Atkins' sediment budget may be provided by April 30, 2009, and Defendants agree that Plaintiffs may take Mr. Atkins' deposition on that issue if desired.

RESPECTFULLY SUBMITTED:

Dated: April 6, 2009.

GROEN STEPHENS & KLINGE LLP

By: /s/ Richard M. Stephens  
Richard M. Stephens (WSBA # 21776)  
Attorneys for Plaintiffs

Dated: April 6, 2009.

LANE POWELL PC

By: /s/ Michael A. Nesteroff  
Grant S. Degginger, (WSBA #15261)  
Michael A. Nesteroff (WSBA # 13180)  
Attorneys for Defendant  
ConocoPhillips Company

Dated: April 6, 2009.

HUNTON & WILLIAMS LLP

By: /s/ Belynda Reck  
Belynda Reck, *Admitted pro hac vice*  
Attorneys for Defendant  
Intalco Aluminum Corporation

1 Dated: April 6, 2009.

DAVIS WRIGHT TREMAINE LLP

3 By: /s/ Bradley Fisher

4 Bradley Fisher (WSBA # 19895)

5 Attorneys for Defendant

Intalco Aluminum Corporation

6  
7 **ORDER**

8 Based on the foregoing stipulation of the parties, and being fully advised,

9 IT IS HEREBY ORDERED that the below pretrial deadlines will be continued as  
10 follows:

11 Dispositive Motions:

October 1, 2009

12 39.1 Mediation:

November 17, 2009

13 Motions in limine:

December 18, 2009

14 The parties are ordered to disclose the rebuttal reports of Jeffrey Layton, Duncan Hay and Robert  
15 Wallace on or before April 30, 2009. Depositions of Mssrs. Layton, Hay and Wallace shall be  
16 conducted within 30 days thereafter.

17 Dated: April 9, 2009.

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22 John C. Coughenour  
UNITED STATES DISTRICT JUDGE